

EXHIBIT 5

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11193NG

-----X
SHAWN DRUMGOLD,
PLAINTIFF

VS.

TIMOTHY CALLAHAN, ET AL,
DEFENDANTS
-----X

DEPOSITION of FRANCIS O'MEARA, a witness
called on behalf of the Plaintiff, pursuant to the
provisions of the Federal Rules of Civil Procedure, before
Nancy M. Walsh, Certified Shorthand Reporter (#118593)/
Registered Professional Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at the law office
of Tommasino & Tommasino, Two Center Plaza, Boston,
Massachusetts 02108, on Thursday, December 14, 2006,
commencing at 10:13 a.m.

NANCY M. WALSH
COURT REPORTING SERVICES
131 CRANE STREET
DEDHAM, MASSACHUSETTS 02026
TELEPHONE (781) 326-5062
FAX (781) 326-5072

1 Q When did you pass the bar? The questions get harder.

2 A December of -- I was notified in December of '78.

3 Q Where did you go to law school?

4 A Suffolk Law School.

5 Q Where did you go to college?

6 A University of Massachusetts.

7 Q What was the first job you had as a lawyer?

8 A I was employed at the Suffolk County District Attorney's
9 office.

10 Q What years were you employed at the Suffolk DA's office?

11 A From 1976 until 1992.

12 Q Could you tell me just in summary fashion the jobs that
13 you held as Assistant District Attorney?

14 A Yes. I became Assistant District Attorney on January 3rd
15 of 1979. From then until September of 1983, I was
16 assigned to a felony team -- major felonies in Suffolk
17 Superior Court. From 1983 September until August of
18 1992, I was assigned to the homicide team for the Suffolk
19 County District Attorney's office?

20 Q And did you hold a position on the homicide team other
21 than member or in addition to being a member?

22 A Yes, ultimately, not originally.

23 Q When did you --

24 A February of '89.

1 Q And what was that position?

2 A I was chief of the Homicide Division.

3 Q And did you stay in that position until August of '92?

4 A I did.

5 Q And when you left the District Attorney's office in
6 August of 1992, what did you do for employment?

7 A Private practice.

8 Q And have you continued in private practice since leaving
9 the District Attorney's office?

10 A I have.

11 Q In February of 1989 when you became chief of the homicide
12 team -- is it the homicide team or the Homicide Division?
13 What's the right terminology?

14 A It's Homicide Division and -- one moment, please. I want
15 to say February of '88, not '89.

16 Q If I suggest to you that the homicide we're talking about
17 here occurred in August of '88, were you the --

18 A On my watch.

19 Q Were you the chief of Homicide Division at that time?

20 A Yes.

21 Q So it would be February of '88?

22 A Yes.

23 Q When you became chief of the Homicide Division, how many
24 attorneys were in that division?

1 Q Do you remember being in the Roxbury District Court on
2 the day he was arrested?

3 A I may have been, but I don't remember.

4 Q Do you remember on the day that Mr. Drumgold was arrested
5 there was an issue about him being interrogated by Boston
6 police officers?

7 A I do remember that.

8 Q What do you remember about your involvement, if any, with
9 that situation?

10 A I remember being contacted by an Assistant District
11 Attorney in the Roxbury District Court, contacted by
12 phone. I was in my office, the courthouse was behind us.
13 And this assistant called me and indicated there was an
14 individual in the dock area who wished to -- he
15 understood wished to speak about the Tiffany Moore murder
16 case and that the -- one of the Justices of the Roxbury
17 District Court, Judge Martin, had indicated that he
18 didn't want the individual spoken to while he was in the
19 court dock by police.

20 Q So why was he calling you?

21 A To ask me for advice as to what this was -- this was a
22 somewhat unusual circumstance that a Judge would do this,
23 and he was asking me for advice as to what, if anything,
24 he should do.

1 Q What did you tell him?

2 A I told him that I wasn't able to get out to Roxbury that
3 morning but that I wanted to give him -- pretty much
4 dictate to him a message that I wanted him to put before
5 Judge Martin to see if we could convince him the order
6 ordering us not to be able to speak to people in the
7 Roxbury District Court dock was I didn't think at the
8 time an accurate order. And I was hoping we could
9 convince Judge Martin to reverse himself.

10 Q Why was it that you thought that Judge Martin's order was
11 not the correct order?

12 A The practice I had been familiar with over the many, many
13 years was there were often times when docks, dock areas
14 where people are locked up, have people who want to speak
15 to law enforcement, and it's routinely done. And I was
16 never aware that any Judge who took the position up until
17 that day that we couldn't speak to people when they were
18 in courthouses.

19 Q Did you understand that the individual they were talking
20 about had been charged with a drug offense?

21 A I can't remember that right now. I didn't even remember
22 it was Drumgold. I remember there was someone who we
23 wanted to speak to.

24 Q Did you understand that the person they were talking

1 about was about to be charged with first degree murder?

2 A I don't remember that today.

3 Q If you had known that the individual this Assistant
4 District Attorney was talking about was represented by
5 counsel, would you have given the same advice?

6 MR. KATZ: Objection.

7 A Yes.

8 Q And in your opinion, was it appropriate for the District
9 Attorney's office to talk to a Defendant represented by
10 counsel in the dock?

11 MR. KATZ: Objection.

12 A If the individual wished to speak to law enforcement, it
13 would be my belief that whether he was -- if he had been
14 assigned a lawyer or retained a lawyer, if he chose to
15 waive his rights not to speak to us and speak to us, I
16 think we could speak to him.

17 Q Was it your opinion that you could do that without
18 talking to his lawyer to satisfy that there was a waiver?

19 MR. KATZ: Objection.

20 A If I were involved in the case and there was a lawyer
21 present, I wouldn't do anything to go around the lawyer.
22 But if it came to my attention that somebody wanted to
23 speak to us and didn't want to have his lawyer present or
24 wanted to speak regardless of the fact that he had a

1 lawyer, then we'd listen to him.

2 Q And again, in that hypothetical situation, would your
3 opinion be any different if that individual had
4 previously said he wanted to have his lawyer present?

5 A That would change it.

6 Q If the witness at some point had said they wanted to have
7 a lawyer present, would it be correct that your advice
8 would be you needed to go through the lawyer?

9 A My advice would be that the law on that point is opened
10 to some interpretation as to whether the person could
11 still then waive their right to counsel. It wasn't a
12 clear area in my mind at the time.

13 Q In your role as supervising the homicide -- members of
14 the homicide team, would you advise a member of the
15 homicide team to take a statement from a witness who had
16 previously said in court that he wanted to talk only
17 through his lawyer?

18 MR. KATZ: Objection.

19 MR. CURRAN: Objection.

20 A Possibly.

21 Q In this case, do you remember which Assistant DA it was
22 that called you?

23 A I do.

24 Q And who was that?

1 A Judge Jack Canavan.

2 Q And did then Mr. Canavan tell you that the individual
3 that you were discussing was a suspect in the Tiffany
4 Moore murder?

5 A I can't remember if that's the case. I don't remember
6 whether it was a suspect or a potential witness or a
7 potential suspect. It was somebody who was somehow
8 involved in the case and wanted to speak to the police.

9 Q But you don't have a memory one way or the other whether
10 you were told that this person was, in fact, the prime
11 suspect at that point in the murder?

12 A I don't remember right now that I was told that. I
13 imagine if it was the case I would have been.

14 Q But you don't remember that being the case?

15 A I don't remember that being the case now.

16 Q Did Mr. Canavan tell you why it was that Judge Martin had
17 entered this order that this person was not to be talked
18 to?

19 A No, just that he had entered it that he didn't want
20 people spoken to in the court dock area.

21 Q Did Mr. Canavan tell you that this individual had been
22 charged with murder and that they were waiting for an
23 appointed counsel to appear to talk to him?

24 A I don't remember that today.

1 Q If you had been told that the individual that you were
2 discussing had been charged with first degree murder,
3 that counsel had been appointed, and that they were
4 waiting for the counsel to appear, would you still have
5 instructed Mr. Canavan that he should -- that, in your
6 opinion, the order of Judge Martin was not correct?

7 MR. CURRAN: Objection.

8 MR. KATZ: Objection.

9 MR. WHITE: Objection.

10 A I would have instructed Mr. Canavan, as I believe I did,
11 if there was an individual who wanted to speak to us and
12 waive his right to counsel that we would listen to him,
13 "we," meaning the police.

14 Q Did you tell Mr. Canavan whether he should obey the order
15 of Judge Martin?

16 A Absolutely I did.

17 Q Did you ever suggest to Mr. Canavan that because, in your
18 opinion, the order of Judge Martin was not correct he
19 didn't have to follow it?

20 A No, I never suggested that.

21 Q What was it that you told Mr. Canavan to tell Judge
22 Martin?

23 A That it was my opinion that we did have the right to
24 speak to people who wanted to speak to us about any

1 homicide case, particularly this one, and that I didn't
2 see any difference between whether the individual was in
3 the dock area in the police station or in the courthouse
4 which is connected by a common corridor, that if an
5 individual wished to speak to us that we should be able
6 to hear what he has to say. And I wanted to ask
7 Mr. Canavan to impress that upon Judge Martin and see if
8 we could convince him to allow the police to speak to
9 him.

10 Q Did you talk to Phil Beauchesne about this call from
11 Canavan?

12 A I don't remember today.

13 Q Did you talk to any Boston police officers about this
14 situation of the person down the Roxbury District Court
15 who wanted to talk about the Tiffany Moore murder?

16 A Eventually I did, yes.

17 Q Who did you eventually talk to?

18 A I believe it was Detective Richard Walsh or Detective
19 Paul Murphy. I can't remember which one I talked to.

20 Q When was it that you talked to them?

21 A It had to be some significant time, maybe a hour or more
22 after I spoke to Mr. Canavan.

23 Q Was that --

24 MR. CURRAN: If I can put an objection on the

1 stated your objection.

2 Q Was the conversation with Walsh or Murphy the next
3 conversation you had on this subject after you talked to
4 Canavan?

5 A I don't remember.

6 Q Do you remember talking to anyone between Canavan and
7 Walsh and Murphy?

8 A I don't remember.

9 Q Or Walsh or Murphy? What do you remember about the
10 conversation with Walsh or Murphy?

11 A That advising whichever one I was speaking to that we had
12 been unable to persuade Judge Martin to lift the order,
13 if that's what we call it, and that, therefore, I expect
14 they, therefore, had to follow the Judge's order and
15 couldn't speak to the witness or the Defendants or
16 whatever it was, they can't speak to them.

17 Q Do you remember Walsh or Murphy telling you, we've
18 already talked to him?

19 A That is exactly what I was told.

20 Q At that point, did they tell you what that person said?

21 A I don't recall.

22 Q Did you call them, or did they call you?

23 MR. WHITE: Objection.

24 A The conversation that I believe I had with one or the

1 record for the purposes today, and it would be an ongoing
2 objection. I know this is a discovery deposition for
3 you. But the objection is this, to the extent this is a
4 case that is 18 years old that Mr. O'Meara has already
5 been subject to testimony at a hearing, then based on
6 testimony today in regards to his lack of memory, I'm
7 going to object to the extent that any of his answers
8 today are going to be -- which are inconsistent with what
9 was testified earlier would be adverse to any of the
10 Defendants in this case.

11 MR. WHITE: I'll join the objection.

12 MR. DONNELLY: I'll join the objection.

13 MS. HARRIS: Me, too.

14 MR. REILLY: I don't understand the
15 objection, but you've stated the objection.

16 MR. CURRAN: In a nutshell, the testimony,
17 which I'm sure was clearer and better memory that
18 occurred back in 1988 and '89, was the subject of an
19 extensive hearing and a finding by a Judge, and it's been
20 established. And now for you to get into questioning
21 this witness and change that testimony because of lack of
22 memory creates problems for everybody here.

23 MR. REILLY: I don't think I've changed
24 anything. I don't understand your objection, but you've

1 other of them, they called me.

2 Q And why did they say they were calling you?

3 A I think because they knew I was looking for them.

4 Q And how did they know that?

5 A I don't know. I just know I was looking for them, and
6 they somehow must have learned that I was looking for
7 them, and they called me.

8 Q Why were you looking for them?

9 A To tell them we were unable to convince Judge Martin to
10 lift that order, and therefore, they could not speak to
11 this person.

12 Q You had the conversation with Canavan where you asked him
13 to go back to the Judge to try to get him to change his
14 mind?

15 A Yes.

16 Q Did you hear back that the Judge refused to change his
17 mind?

18 A Yes.

19 Q And who told you that?

20 A Mr. Canavan.

21 Q Did he tell you anything else about what happened when he
22 went back before Judge Martin?

23 A Not that I remember today.

24 Q And why was it that you, as opposed to Canavan, were

1 trying to get a hold of Walsh or Murphy?

2 A Because I wanted to tell them that we were unable to
3 convince the Judge to remove his order, and that as such
4 I did not want them to talk to the individual.

5 Q Did Canavan tell you whether he had previously told Walsh
6 or Murphy about the order?

7 A I don't remember.

8 Q Did Canavan tell you whether he had previously told any
9 of the Boston Police Department, any of the members of
10 the Boston Police Department about Judge Martin's order?

11 A I don't remember.

12 Q What did Walsh and Murphy tell you about their contact
13 with this person?

14 MR. WHITE: Objection.

15 Q Walsh or Murphy?

16 A I don't remember.

17 Q Do you remember learning at that point in the
18 conversation with Walsh or Murphy that the individual you
19 had been talking about had been charged with the murder
20 of Tiffany Moore?

21 A I don't remember that.

22 Q Did you learn that at some point?

23 A I'm sure I did.

24 Q Do you know when?

1 A No, I don't.

2 Q Did Walsh or Murphy tell you that this individual had
3 made a statement to them?

4 A Yes.

5 Q Did they tell you whether the statement was helpful to
6 them in their investigation?

7 A I don't remember.

8 Q What did they say to you when you told them that Judge
9 Martin hadn't changed his order, and you didn't want them
10 to talk to him?

11 MR. WHITE: Objection.

12 MS. HARRIS: Objection.

13 MR. DONNELLY: Objection.

14 A That they had already spoke to him.

15 Q What did you say to them?

16 A Well, don't speak to him anymore.

17 Q Was there anything else said during that conversation
18 with Walsh or Murphy?

19 A Not that I remember.

20 Q Having gone through it, do you have any better memory of
21 whether it was Walsh or Murphy that you were talking to?

22 A No.

23 Q What was the next conversation you had with anybody about
24 this situation in the Roxbury District Court?

1 Q Were there monthly meetings or yearly meetings between
2 the DA's office Homicide Division, and the Boston Police
3 Homicide Division on a regular basis as opposed to
4 meeting on particular cases?

5 A Not that I remember.

6 Q Do you remember ever having discussions with either Daley
7 or McNelley about training for homicide detectives?

8 A I don't remember that.

9 MR. REILLY: Those are all the questions I
10 have for you.

11 MR. CURRAN: I have a few questions.

12 CROSS-EXAMINATION BY MR. CURRAN:

13 Q Mr. O'Meara, is it fair to say that your memory was
14 clearer back in 1988 and '89 in regards to the
15 circumstances of the Tiffany Moore murder and your
16 involvement in the investigation in any hearings?

17 A Yes.

18 Q And did you, in fact, testify at a Motion to
19 Dismiss/Motion to Suppress before Judge Volterra?

20 A Yes, I did.

21 MR. CURRAN: And can I have this marked as an
22 exhibit?

23 (Document marked Exhibit No. 156 for
24 identification.)

1 Q Is it fair to say that your answers to Mr. Reilly's
2 questions today regarding the circumstances of the arrest
3 and arraignment of Shawn Drumgold were to the best of
4 your ability as it is here today?

5 A Yes.

6 Q And that day of events was the subject of an extensive
7 hearing conducted by Judge Volterra in this case?

8 A Yes. The day of events, yes.

9 Q And would your testimony that you provided to the Court
10 back in 1989 refresh your memory in regards to the events
11 of that particular day?

12 A I imagine it would.

13 MR. CURRAN: I'd ask you to take time with
14 counsel to review the full document. Take as much time
15 as you need.

16 (Witness peruses the document.)

17 (Discussion off the record.)

18 Q Mr. O'Meara, have you had a chance to review your
19 transcript of your testimony from the Motion to Dismiss
20 hearing before Judge Volterra?

21 A Yes, I have.

22 Q Does that refresh your memory relative to the
23 procedures -- procedurally what took place on the day of
24 Shawn Drumgold's arraignment?

1 A Somewhat, yes.

2 Q Would you acknowledge that the accuracy of your testimony
3 was far more accurate and clearer back in 1989 when the
4 hearing was held before Judge Volterra?

5 MR. REILLY: Objection.

6 A It certainly appears that way.

7 Q Based on your review of that, do you want to clarify any
8 of your previous testimony here today?

9 A I would say where my testimony either is inconsistent
10 with a lack of memory today with what I said then, I
11 believe what I said then is my better memory and more
12 accurate than what my memory or accuracy would be here
13 today.

14 Q And do you acknowledge that the first phone call that you
15 received was from the Assistant District Attorney Jack
16 Canavan, Judge Canavan, who was the supervisor of Roxbury
17 District Court at that time?

18 A I believe that's the case, yes.

19 Q And that was in regards to the fact that Shawn Drumgold,
20 who was under a different alias on a drug charge, was in
21 the dock, and there was an effort to get Shawn Drumgold
22 booked and photographed and fingerprinted and potentially
23 interviewed for the purposes of the murder charge?

24 A That's correct, sir.

1 Q At which point in time there was an issue in regards to
2 Judge Martin wanting the Defendant back at that
3 particular time?

4 A I hadn't recalled that earlier, but I do now, yes.

5 Q At which point in time there were several conversations
6 that took place during the course of that day with John
7 Canavan, the supervisor of Roxbury District Court?

8 A More than one conversation I had with Mr. Canavan, yes.

9 Q And there was a subsequent order from Judge Martin to
10 Mr. Canavan relative to the interview of Shawn Drumgold;
11 is that correct?

12 A That's correct.

13 Q And once that information was relayed to you, you
14 requested Mr. Canavan to go back down and request of the
15 Judge permission to interview Shawn Drumgold; is that
16 correct?

17 A To be allowed to go through the standard booking
18 procedure which would include asking him if he wanted to
19 speak to us.

20 Q And at that point in time, Shawn Drumgold had been
21 released to the members of the Boston Police Department
22 for the purposes of the booking procedure?

23 A That was my understanding.

24 Q And these were conversations that were taking place

1 between John Canavan and the Court and yourself and the
2 booking procedure was underway; is that correct?

3 A That's correct. As I understood, that's what was then
4 going on.

5 Q And subsequently, Judge Martin ordered that an interview
6 not take place; is that correct?

7 A Based upon my review of that document, he ordered that
8 the Defendant be back by 2:30 and I -- as that document
9 refreshes my memory, I told Jack that I wasn't sure that
10 we would be finished booking him by 2:30, and he should
11 alert the Judge to that.

12 Q In fact, you had previously testified that if he wishes
13 to speak to the detectives, we're going to let him speak
14 as long as he wants to speak. That could be an hour,
15 could be an hour and a half, could be more. Is that
16 correct?

17 A That's correct.

18 Q And when that information was related to Judge Martin at
19 that time is when Judge Martin entered an order; is that
20 correct?

21 A I believe that's the correct chronology.

22 Q And at that point in time, Assistant District Attorney
23 Jack Canavan relayed that information to you as head of
24 homicide?

1 A That's correct.

2 Q And what did you do at that point in time with regards to
3 the receipt of that information with regard to the
4 detectives that were investigating the murder of Tiffany
5 Moore?

6 A Once I determined that was the order and it wasn't going
7 to be reversed and it was going to stand as such, I
8 immediately started to reach out to Detectives Walsh and
9 Murphy to let them know of the order and to complete the
10 booking but not to talk to him.

11 Q Did you eventually have contact with one of the
12 detectives?

13 A Consistent with the testimony in the transcript, yes, I
14 did after much attempts to get him in -- get them at
15 Roxbury or Roxbury Court, the police station downstairs,
16 upstairs, and the courthouse both floors, not being an
17 easy place to get to given the business in that place.

18 Q At the time you had the conversation with one of the
19 detectives, had they completed the interview with Shawn
20 Drumgold?

21 A Whichever one spoke with me in response to my telling
22 them not to talk to him said, We already did.

23 Q Based on that conversation you had with them, were you
24 aware whether or not they had had knowledge of that order

1 by Judge Martin?

2 MR. REILLY: Objection.

3 A I wasn't aware that they were. That's the reason I was
4 trying to get to them and tell them of it.

5 Q In order to comply in good faith with the Court's order?

6 A Yes.

7 Q Based on your assignment -- strike the question. In
8 August of 1988 after the arrest of Shawn Drumgold, Phil
9 Beauchesne was responsible for the prosecution of Shawn
10 Drumgold and a codefendant Terrance Taylor; is that
11 correct?

12 A That's correct.

13 Q And based on legal principle and the statutes in the
14 Commonwealth of Massachusetts, who was responsible for
15 the investigation of any potential homicides in Suffolk
16 County?

17 A In Boston, it's, by designation, the Boston Police
18 Homicide Unit. Other parts of Suffolk County are
19 different designees.

20 Q But in regards to the statute, the legal statute, who was
21 in control of all homicide investigations in the City of
22 Boston.

23 A The District Attorney's in the various counties, in this
24 case, Suffolk County.